

GOVERNMENT OF PUDUCHERRY

LABOUR DEPARTMENT

(G.O. Rt. No. 55/Lab./AIL/J/2013, dated 16th April 2013)

NOTIFICATION

Whereas, an award in I.D. No.44/2012, dated 2-1-2013 of the Labour Court, Puducherry in respect of the industrial dispute between the Bharathiyar College of Engineering and Technology Non-Teaching Staff Union, Karaikal and the management of M/s. Bharathiyar College of Engineering and Technology, Karaikal over withdrawal of customary concession/privilege of providing canteen facilities to the workers has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G.O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said award shall be published in the official gazette, Puducherry.

(By order)

S. THAMMU GANAPATHY,

Under Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PUDUCHERRY

Present : Thiru T. MOHANDASS, M.A., M.L.,
Presiding Officer, Labour Court.

*Wednesday, the 2nd day of January 2013***I.D. No. 44/2012**

Bharathiyar College of Engineering and
Technology Non-Teaching Staff Union,
Gnanajothi Illam, 4th Lane,
Kuthulampet Road,
Senior Kulam Street, Karaikal.

.. Petitioner

Versus

The Management,
Bharathiyar College of Engineering
and Technology,
Karaikal.

.. Respondent

This industrial dispute coming on 12-12-2012 before me for final hearing before me in the presence of Thiru V. Govindassamy, Advocate for the petitioner, Thiruvalargal L. Swaminathan and M. Muruganandam, Advocates for the respondent, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this court passed the following:

AWARD

This industrial dispute arises out of the reference made by the Government of Puducherry, *vide* G.O. Rt. No. 160/AIL/Lab./J/2008 dated 3-12-2008 of the Labour Department, Puducherry to resolve the following dispute between the petitioner and the respondent, *viz.*,

(1) Whether the dispute raised by Bharathiyar College of Engineering and Technology Non-Teaching Staff Union, Karaikal against the management of Bharathiyar College of Engineering and Technology, Karaikal over withdrawal of customary concession/privilege of providing canteen facilities to the workers is justified or not?

(2) If justified, what relief, they are entitled to?

2. The petitioner in his petition has stated as follows:-

The respondent management is an educational institution. The respondent management employed about 160 workers. The respondent management not paying appropriate wages to their employees. Since the service conditions of the employment were very poor and the grievances of the workers were not redressed by the management, the workers formed themselves into a union on 8-3-2007.

On 12-9-2006, the union placed a charter of demands relating to wage revision and other demands before the respondent management. Since the respondent did not agreed to any of the demands, the union raised an industrial dispute before the Conciliation Officer, Karaikal. The conciliation proceedings was commenced but the management did not come forward to settle the matter before the Conciliation Officer.

From the beginning of the college, the entire Non-Teaching Staff were provided with free meals, tiffin, tea etc., by the management. This concession includes in service conditions of the employment, which were specified in the fourth schedule of the Industrial Disputes Act, 1947. The management without any prior notice suddenly stopped the facilities through a circular, dated 9-7-2007 stating that the food, breakfast and beverages were given free of cost to non-teaching staffs will not be available from 11-7-2007 and the same may be availed on payment basis from that date. Section 9-A of the Industrial Disputes Act, 1947 states that any facility that was offered to the workers should not be altered without consulting the petitioner. Furthermore section 9-A requires 21 days prior notice before altering the service conditions. The management did not give any prior notice, which is contrary to section 9-A of the Industrial Disputes Act.

All the workers belong to poor family and the stopping of free food is very much affected them. The union members are getting less than the minimum wage. Hence, they are not able to pay for the food available in the canteen. Hence, the present industrial dispute is filed.

3. The respondent in his counter has stated as follows:-

During the academic year 2006-2007, it was the administrative decision of the management that the entire students getting admitted and studying in Bharathiar College of Engineering and Technology, Karaikal (whether day scholar or hostel students) to compulsorily have food in the college and necessary charges were collected from the students while they are getting admitted in the college. The payments made by the students for having food in the college is utilised as a gesture by the management of the respondent college to permit the staff members and employees of the petitioner union to have free food at the cost of the students money. While this being the factual situation, the members of the petitioner union taking for granted that the concession of free food provided to them as a customary privilege is highly ridiculous, unethical and raising an industrial dispute. To continue the free food facility is whimsical and cannot be entertained even remotely.

It is the policy decision of the management of the respondent college to do away with the system of having compulsory food in the college for the students for the academic year 2007-2008, as many parents of the day scholar students have stated to the administration that they want their wards to have their food in their home. As the motto of the respondent college is only to impart quality education, forcing the students to have compulsory food in the respondent college had resulted in bitter experiences and understanding the necessity of delivery of quality output, a circular, dated 9-7-2007 was displayed by the order of Chairman of the respondent college that "Canteen facilities will be available for the staff and students on payment of charges displayed in the dining hall and lunch will be served only for the hostel students henceforth". Thus it could be clearly seen that the respondent college which is surviving at the cost of the students money had taken a cautious and thoughtful decision not to compel the students to have food in the college.

When the hostel students alone are permitted to have food in the respondent college on payment of cost, expecting free food in the canteen at the cost of the students by members of the petitioner union is highly condemnable, as no such clause has been stipulated in the appointment order of the members of the petitioner union.

Without understanding the provisions of section 9-A of Industrial Disputes Act, 1947 treating the free food provided during the academic year 2006-2007 to the members of the petitioner union as a privilege, the members of the petitioner union are under the mistaken notion that a notice should be issued to the petitioner union for withdrawing the concession of free food. Section 9-A of Industrial Disputes Act, 1947 contemplates that the notice should be given only if there is a vested right which is withdrawn without notice and in the instant case providing free food is only a concession extended at the cost of the students and the same cannot be claimed as a vested right by the members of the petitioner union. Hence, they pray for dismissal of the industrial dispute.

4. On the side of the petitioner, PW.1 was examined and Ex.P1 to Ex.P7 were marked. No oral or documentary evidence was adduced on the side of the respondent.

5. *The point for consideration is:*

Whether the industrial dispute can be allowed?

6. *On this point :*

The contention of the petitioner is that the members of the Bharathiyar College Non-teaching Staff Union were provided with free meal, tiffin and tea in the students mess by the respondent management and it is a customary practice which cannot be withdrawn without notice to the petitioner's union and the respondent management without any prior notice had suddenly stopped this facility through a circular, dated 9-7-2007 stating that the food, tea, coffee will not be available from 11-7-2007 to all the staff members (both teaching and non-teaching) of the college and only canteen facility will be available in the college campus for staff and students on payment of charges and aggrieved against the circular, dated 9-7-2007, the petitioner contends that the respondent management had violated section 9 A of the Industrial Disputes Act, 1947 and their service conditions are altered without notice. In order to prove his case, he relied upon the following decisions:-

Civil Appeal No. 377 of 1970, date 24-7-1975:

Management of Indian Oil Corporation Limited and its Workmen:-

"Industrial Disputes Act, 1947 - Section 9A - Payment of compensatory allowance by Indian Oil Corporation - Whether an implied condition of service - Whether unilateral cancellation by management tenable - Held, grant of compensatory allowance, an implied term of service - Further held, unilateral withdrawal of employer would adversely affect the interests of workers - Compensatory allowance, in the circumstances, held was not paid in substitute of house rent allowance."

C.A. Nos. 3247-48/1993, dated 26-8-1993 (S.C.)

*Calcutta Electric Supply Corporation Limited,
Versus Calcutta Electric Supply Workers' Union and
others :-*

"Employees State Insurance Act, 1948 - Section 72 - Regulations under the Act - Reg. 97 - Industrial Disputes Act, 1947 Section 9-A - Medical benefits available to workmen of the appellant Corporation as part of service conditions - Withdrawal of such benefits on the ground that workmen governed by ESI scheme is impermissible."

7. In order to prove the claim of the petitioner, the President of the union by name Manickam was examined as PW.1. PW.1 in his evidence has deposed as stated in the claim statement and marked Ex.P1 to Ex.P7. Ex.P1 is the copy of the circular. A perusal of Ex.P1 reveals that the respondent management issued a circular on 9-7-2007 informing that providing food, tea, coffee to all the staff members will be stopped. Ex.P2 and Ex.P3 are the copy of the letter sent to the Labour Officer, complaining about stopping of free food to the staff members by the respondent. Ex.P4 is the copy of the notice of enquiry sent by the Labour Officer to the petitioner and the respondent, fixing the conciliation on 23-8-2007. Ex.P5 is the copy of the reply submitted to the Labour Officer. Ex.P6 is the copy of the failure report. Ex.P7 is the copy of the notification.

8. *Per contra*, the contention of the respondent management is that individual order of appointment issued to the staff members and more-so the members of the petitioner union would clearly explain the factum of reality that there exist no clause in the appointment order that the members of the petitioner union will be provided with free canteen facilities and further during the academic year 2006-2007, it was the administrative decision of the management that the entire students getting admitted and studying in the college (whether day scholar or hostel students) to have compulsorily food in the college and necessary charges were collected from the students while they are getting admitted in the college and the food prepared for the students at the college mess at their cost were extended to the non-teaching staff also which cannot be construed as a service condition.

9. In order to support his claim, the learned counsel for the respondent relied upon the decision rendered in *Voltas Switchgear Plant Employees' Union Versus Voltas Switchgear Limited* reported in 2001 L.L.R 373, wherein it is held as follows:-

"The industrial court has rightly reached to the conclusion that fixing new rates to be charged, cannot be said to be within the purview of the canteen managing committee constituted or to be constituted under rule 84 of the rules. No fault with the finding recorded in this behalf can be found.

The industrial court also recorded a finding that fixing of rates of canteen items, cannot be the condition of service under section 90A of the Industrial Disputes Act, 1947 and consequently the canteen facility and fixing new rates to be charged cannot be said to be the condition of service. The said finding of the industrial court is based on the judgment of this court in the case of *Blue Star Workers' Union Versus Blue Star Limited*, 1990-II, CLR 258, wherein the learned single judge of this court has categorically held that "Canteen facility and the rates to be charged for food items is not a condition of service.". No case is made out by the petitioner/union to depart from the view in the field since 1990 in the matter of *Blue Star Workers' Union*.

10. According to PW.1, providing of free meal, tiffin and tea in the students mess by the respondent management is a customary practice which cannot be withdrawn without notice to the petitioner union under section 9-A of Industrial Disputes Act. But PW.1 in his cross-examination has stated that there is no memorandum of settlement between the petitioner's union and the respondent management with regard to providing of free meal, tiffin and tea under section 12(3) of Industrial Disputes Act. The relevant portion of his evidence runs as follows:-

"..... இவ்வச உணவு வழங்குவதற்காக ஆதாரம் தாவாவில் தாக்கல் செய்யப்படவில்லை. யூனியனுக்கும் கல்லூரிக்கும் சட்டப்பிரிவு 12 (3) என்பவைகளில் எந்த ஒப்பந்தமும் இல்லை. பணி சம்பந்தப்பட்ட நிபந்தனைகள் எதையும் நான் வழக்கில் தாக்கல் செய்யவில்லை.".

PW.1 in his cross-examination has also stated that the mess facilities are provided only for the hostel students on payment of mess fees and the free food has been provided to the members of the petitioner's union from the mess of the hostel student. The relevant portion of his evidence runs as follows:-

"..... எதிர்மனுதாரர் கல்லூரியில் வெளிமாநிலத்திலும் இருந்தும் மாணவர்கள் படிக்கிறார்கள் என்றால் அது சரிதான்.

கல்லூரியிலுள்ள மாணவர்கள் சாப்பிட்டு வந்த மெஸ்ஸிலிருந்து தான் எங்களுக்கு உணவு வழங்கப்பட்டது என்றால் அது சரிதான்.

யூனியனுக்கு என்று தனிப்பட்ட உணவகம் கிடையாது. மாணவர்கள் பணம் கடடிதான் உணவகத்தில் சாப்பிடுகிறார்கள் என்றால் அது சரிதான்...."

11. It is true that section 9-A of Industrial Dispute Act, 1947 contemplates that the notice should be given if there is a vested right which is withdrawn without notice. But in the instant case, providing free food is only at the cost of the students and the same cannot be claimed as a vested right by the members of the petitioner's union. Therefore the contention of the

petitioner union that free food provided in the students' mess by the respondent management is not a condition of service which should not be withdrawn does not sound merit. In the absence of any memorandum of settlement or any clause in the appointment order to this effect, the members of the petitioner's union cannot claim free food as a service condition and there exists no infirmity in the circular, dated 9-7-2007 issued by the respondent college and hence invoking section 9A of the Industrial Disputes Act does not arise to the facts of the present industrial dispute. Accordingly, this point is answered.

12. In the result, the industrial dispute is dismissed and the petitioner union is not entitled to get the cash compensation of ₹ 60 per day per employee *in lieu of* free food and tea, etc., from 11-7-2007 and also not entitled to set aside the circular, dated 9-7-2007 relating to withdrawal of concession. No costs.

Typed to my dictation, corrected and pronounced by me in the open court on this the 2nd day of January, 2013.

T. MOHANDASS,
Presiding Officer,
Labour Court, Puducherry.

List of petitioner's witness:

PW.1 — 12-11-2010 — Manickam

List of petitioner's exhibits:

Ex.P1 — Copy of the circular, dated 9-7-2007

Ex.P2 — Copy of the complaint sent by the petitioner union to the Labour Officer, dated 11-7-2007.

Ex.P3 — Copy of the complaint sent by the petitioner union to the Labour Officer, dated 11-7-2007.

Ex.P4 — Copy of notice of enquiry, dated 14-8-2007 sent to the petitioner and respondent.

Ex.P5 — Copy of the reply, dated 10-9-2007 sent to Labour Officer by respondent.

Ex.P6 — Copy of failure report, dated 16-9-2008

Ex.P7 — Copy of the gazette notification, dated 3-12-2008.

List of respondent's witnesses: Nil

List of respondent's exhibits: Nil

T. MOHANDASS,
Presiding Officer,
Labour Court, Puducherry.

GOVERNMENT OF PUDUCHERRY

LABOUR DEPARTMENT

(G.O. Rt. No. 56/Lab./AIL/J/2013, dated 18th April 2013)

NOTIFICATION

Whereas, the award in I. D. No. 25/2012, dated 21-12-2012 of the Labour Court, Puducherry in respect of the industrial dispute between the Managing Director, Hindustan Unilever Limited, Personal Products Factory, Puducherry and one Thiru P. Gunasegaran, over non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G.O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said award shall be published in the official gazette, Puducherry.

(By order)

S. THAMMU GANAPATHY,
Under Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PUDUCHERRY

Present : Thiru T. MOHANDASS, M.A., M.L.,
Presiding Officer.

Dated, the 21st day of December 2012.

I.D. No. 25/2012

P. Gunasegaran . . . Petitioner

Versus

The Managing Director,
M/s. Hindustan Unilever Limited,
Personal Products Factory,
Puducherry. . . Respondent

This petition coming on this day for hearing before me in the presence of Thiru B. Mohandass, Advocate for the petitioner and Thiru L. Sathish, Advocate for the respondent and upon persuing the case records, this court made the following :

ORDER

This industrial dispute arises out of the reference made by the Government under section 10 (1) (e) of the Industrial Disputes Act in G.O. Rt. No. 125/AIL/Lab./J/2012, dated 20-7-2012.

2. Today this petition was called. Claim statement not filed. Hence this reference is closed. No costs.

Written and pronounced by me in the open court on this the 21st of December 2012.

T. MOHANDASS,
Presiding Officer,
Labour Court, Puducherry.

**GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT**

(G.O. Rt. No. 57/Lab./AIL/J/2013, dated 18th April 2013)

NOTIFICATION

Whereas, an award in I.D. No. 4/2008, dated 17-1-2013 of the Labour Court, Puducherry in respect of the industrial dispute between the Managing Director, ESSEM Technologies (P) Limited, Puducherry and one Tmt. R. Varalakshmi over non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G.O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said award shall be published in the official gazette, Puducherry.

(By order)

S. THAMMU GANAPATHY,
Under Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PUDUCHERRY

Present : Thiru T. MOHANDASS, M.A., M.L.,
Presiding Officer, Labour Court,
Puducherry.

Thursday, the 17th day of January 2013

I.D. No. 4/2008

R. Varalakshmi,
44, Society Street, Kothapurinatham,
Periyababu Samuthiram Post,
Puducherry . . . Petitioner

Versus

The Managing Director,
ESSEM Technologies (P) Limited,
Mannadipet, Commune, Puducherry . . . Respondent

This industrial dispute coming on 11-1-2013 for final hearing before me in the presence of Mrs. Vrintha Mohan, Advocate for the petitioner,

Thiru C. Jagadeesan, Advocate for the respondent, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this court passed the following:

AWARD

This industrial dispute arises out of the reference made by the Government of Puducherry, *vide* G.O. Rt. No. 16/2008/Lab./AIL/J, dated 11-2-2008 of the Labour Department, Pondicherry to resolve the following dispute between the petitioner and the respondent, *viz.*,

(1) Whether the dispute raised by Tmt. R. Varalakshmi, W/o. Rajaram, Puducherry against the management of M/s. ESSEM Technologies Private Limited, Puducherry over non-employment is justified or not?

(2) To what relief, she is entitled to?

(3) To compute the relief, if any, awarded in terms of money, if it can be so computed.

2. The petitioner in her petition has stated as follows:

The petitioner was a permanent employee with the respondent in the capacity of operator packing division from 5th March 1998. The petitioner became pregnant and the same was informed to the management through proper channel and as such the petitioner has applied and availed leave with the permission of management from 11-8-2005 to 31-1-2006. She had obtained a maternity benefits certificate, dated 8-9-2005 from the E.S.I. Dispensary, Thirubuvana, Puducherry and produced the same before the management for availing maternal benefits in addition to her leave. Since the health of the petitioner was deteriorated with severe post-maternal complaints and that since she has underwent family planning operation and the surgical wound has got infected, the petitioner had once again started taking higher treatment with Dr. Balasoupramanian, who has advised her to take complete rest from 1-12-2005 to 31-1-2006 and all the medical certificates along with the leave letters were periodically dispatched to the management through the petitioner's husband, which was accepted by the respondent every now and then without any protest. When she reported for duty on 1-2-2006 at 9.00 hours, she was pushed out forcibly by the company security. Then the services of the petitioner were fancifully terminated from the afternoon hours of 1-2-2006 itself. Hence, she approached the Labour Officer, raising an industrial dispute and the said conciliation entered in failure.

The respondent management has not followed any of the principles laid down by the labour welfare legislations/model standing orders/ The principles of natural justice in sacking out the respondent from the employment. Hence, the present industrial dispute is filed for her reinstatement and other benefits.

3. The respondent in his counter has stated as follows:

The petitioner was irregular in attending her duties and that too without applying for leave in advance, but used to join in duty by producing some false medical certificate to sustain her unauthorised leave/absence already availed. The petitioner used to become pregnant and availed leave or absence from duty very often and produced false medical certificate. She was asked to produce proper medical certificate from the competent medical person only. The petitioner failed to produce the medical certificates for her absence from work and stayed away voluntarily. She was not denied any work or terminated from services. Without attending duty on production of medical certificate for more than eight months, she has chosen to file a petition before the Conciliation Officer as if she was terminated from service and sought reinstatement with back wages. Hence, they pray for dismissal of the industrial dispute.

4. On the side of the petitioner, PW.1 was examined and Ex.P1 to Ex.P17 were marked. On the side of the respondent, RW.1 to RW.4 were examined and Ex.R1 to Ex.R14 were marked.

5. *The point for consideration is:*

Whether the industrial dispute can be allowed?

6. *On this point:*

The contention of the petitioner is that she was a permanent employee with the respondent in the capacity of operator packing division from 5th March 1998 and when she became pregnant, she applied leave with the permission of the management from 11-8-2005 to 31-1-2006 and she had obtained a maternity benefits certificate, dated 8-9-2005 from the ESI Dispensary, Thirubuvanai, Puducherry and produced the same before the management for availing maternal benefits in addition to her leave and since the health of the petitioner was deteriorated with severe post-maternal complaints and that since she has underwent family planning operation and the surgical wound has got infected, the petitioner had once again started taking higher treatment with Dr. Balasoupramanian, who has advised her to take

complete rest from 1-12-2005 to 31-1-2006 and all the medical certificates along with the leave letters were periodically dispatched to the management through the petitioner's husband, which was accepted by the respondent every now and then without any protest and when she reported for duty on 1-2-2006 at 9.00 hours, she was pushed out forcibly by the company security and then the services of the petitioner were fancifully terminated from the afternoon hours of 1-2-2006 itself. In order to prove her case, she examined herself as PW.1 and marked Ex.P1 to Ex.P17.

7. *Per contra*, the contention of the respondent is that the petitioner was irregular in attending her duties and that too without applying for leave in advance, but used to join in duty by producing some false medical certificate to sustain her unauthorised leave/absence already availed and she used to become pregnant and availed leave or absence from duty very often and produced false medical certificate and she was asked to produce proper medical certificate from the competent medical person only and she failed to produce the medical certificates for her absence from work and stayed away voluntarily. In order to support the said claim, the Managing Director of respondent company was examined as RW.1. RW.1 in his evidence has further stated that in their company, the employees and other staff are supposed to submit leave in the prescribed form before availing leave and leave on medical grounds should be accompanied by the required medical certificate.

8. In order to prove the said aspect, RW.1 has marked the copy of the leave letter applied by PW.1 from 12-5-2003 to 13-7-2003 and Ex.R2 is the medical certificate produced by the petitioner for the said leave period. Further on the side of the respondent, the staff of the respondent management was examined as RW.3. RW.3 in his evidence has deposed that the employees and other staff are supposed to submit leave in the prescribed form before availing leave and leave on medical grounds should be accompanied by the required medical certificate. Ex.R3 is the leave applied in a prescribed leave form from 7-7-2005 to 21-7-2005 with medical certificate under Ex.R4 and Ex.R5 is his Joining Report. RW.1 has also marked leave applied by one Iyyappan from 28-8-2006 to 11-9-2006 in a prescribed form as Ex.R6. A perusal of Ex.R1 to Ex.R6 reveals that in the respondent company, there is a prescribed format for applying leave and the employees had been submitting the leave in the prescribed form before availing leave and leave on medical grounds has been accompanied by the required medical certificate.

9. According to the respondent, the petitioner was irregular in attending her duties and that too without applying for leave in advance. It is the duty of the petitioner to produce the relevant documents to disprove the contention of the respondent. But no documents *viz.*, copy of the leave application, medical certificate, joining report etc., were produced to prove that she applied the medical leave well in advance and got sanctioned.

10. PW.1 in her evidence has deposed that she had obtained a maternity benefits certificate, dated 8-9-2005 from the E.S.I. Dispensary, Thirubuvanai, Puducherry and produced the same before the management for availing maternal benefits in addition to her leave and since her health was deteriorated with severe post-maternal complaints and that since she has undergone family planning operation and the surgical wound has got infected, she had once again started taking higher treatment with Dr. Balasoupramanian, who has advised her to take complete rest from 1-12-2005 to 31-1-2006 and all the medical certificates along with the leave letters were periodically dispatched to the management through the petitioner's husband, which was accepted by the respondent every now and then without any protest.

11. But on the side of the respondent, the extract from the register for entry of workman (both 'in' and 'out') maintained by security officials of the respondent company for the period from 1-1-2006 to 31-3-2006, 4-9-2004 to 31-12-2005 and 1-1-2006 to 31-3-2007 as Ex.R6, Ex.R12 and Ex.R13 respectively to disprove the said contention. A perusal of these documents reveals that nowhere in the said documents, it is mentioned that the husband of the petitioner visited the respondent company, as alleged by PW.1. Hence, this court has come to the conclusion that the petitioner has taken leave for the period from 11-8-2005 to 31-1-2006 without informing to the respondent management well in advance and got sanctioned.

12. On the side of the petitioner, PW.1 has marked copy of the discharge slips issued by Government Maternity Hospital, Puducherry as Ex.P7 and Ex.P10 and the copy of the claim for maternity benefit as Ex.P11 and the copy of the medical certificate issued by Dr. Balasoupramanian, Certh India Hospital, Puducherry as Ex.P12. A perusal of Ex.P7 reveals that the petitioner was admitted in the Government Maternity Hospital from 2-1-2004 to 4-1-2004. As per Ex.P10, she was admitted in the said hospital from 8-9-2005 to 19-9-2005. A perusal of Ex.P11 reveals that the petitioner was admitted in the E.S.I. Dispensary, Thirubuvanai from 8-9-2005 to 19-9-2005 and she has received the maternity benefits from 8-9-2005 to 30-11-2005. As per Ex.P12, the petitioner has been treatment under Dr. Balasoupramanian from 1-12-2005 to

31-1-2006 and the said doctor advised that the petitioner is fit to resume her duty from 1-2-2006. From the above documents, it can be seen that from 2-1-2004 to 31-1-2006, the petitioner was under treatment in the various hospitals. Though the petitioner has established that she was under treatment from 2-1-2004 to 31-1-2006, as an employee, it is her duty to submit the leave application well in advance and got sanctioned. As already stated, the petitioner has failed to establish that she has applied the medical leave well in advance and got sanctioned.

13. The respondent has set up his case that it is admitted that the petitioner was an employee under them, but since she has absented herself from 11-7-2005 without any notice or information or legal sanctioned leave, it will be presumed that she has abandoned the employment. It is pertinent to refer the following decisions, which are relevant to this case:-

2002(4) L.L.N. 850

State of Uttar Pradesh Versus Presiding Officer, Labour Court, Agra and Another:

"Abandonment of service - Even in the case of alleged abandonment, it is necessary for employer to conduct an enquiry, issue a charge sheet and notice to the workman concerned informing him that he is continuously absenting without any sanctioned leave - Admittedly this having not been done in this case the plea of employer about abandonment of service by workman not tenable".

1988 1 LLN. Page 259

Gaurishankar Vishwakarma Versus Egle Spring Industries (P) Limited and Others:

"Industrial dispute - Practice and procedure-Non-employment of workman-Case of employer is that workman has abandoned service-Even in case of abandonment of service employer has to give notice to workman and hold an enquiry-It is for employer to prove such abandonment-Labour Court expected to follow judicial procedure should not depend on unverified statements to come to conclusion that it was workman who had refused to resume work".

14. Admittedly, the respondent has not given any notice to the petitioner either calling upon her to resume the duty or asking her to show cause as to why her services should not be terminated for her failure to resume her duties. No wonder, therefore, that there was no enquiry held before the termination of her service. The case of the respondent is that the petitioner had voluntarily stayed away from attending duty and it is up to her to report to duty after submitting proper medical certificates explaining her absence with justification for the same. It is difficult to accept this case. It is now well settled that even

in the case of the abandonment of service, the employer has to give a notice to the workman, calling upon him to resume his duty and also to hold an enquiry before terminating his service on that ground. In the present case, the respondent has done neither. It was for the employer to prove that the petitioner had stayed away from attending the duty. In the absence of any such evidence, the contention of the learned counsel for the respondent that the petitioner had stayed away from attending the duty, cannot be accepted. In the above circumstances, the termination of the petitioner is bad in law and the same is liable to be set aside.

15. The petitioner herself has admitted that she has taken leave from 11-8-2005 to 31-1-2006. But as already stated, the petitioner has failed to prove that the said leave has been with the permission of the respondent management. Hence, the petitioner cannot claim back wages without working. The provisions of Industrial Disputes Act are not intended for such exploitation in an unfair manner. Hence, considering the facts and circumstances of the case, the petitioner is not entitled for back wages. Accordingly, this point is answered.

16. In the result, the industrial dispute is partly allowed and the petitioner is entitled for reinstatement with continuity of service. However, she is not entitled for back wages and other benefits. No costs.

Typed to my dictation, corrected and pronounced by me in the open court on this the 17th day of January, 2013.

T. MOHANDASS,
Presiding Officer, Labour Court,
Puducherry.

List of petitioner's witness:

PW.1 — 22-7-2010 Varalakshmi

List of petitioner's exhibits:

Ex.P1 — Identity certificate of the petitioner issued by the respondent.

Ex.P2 — Petitioner's identity card-E.S.I. Corporation

Ex.P3 — Petitioner's provident fund receipts to
Ex.P6

Ex.P7 — Discharge slip of the petitioner

Ex.P8 — Salary slips of the petitioner and
Ex.P9

Ex.P10 — Sterilisation and discharge slip of the petitioner.

Ex.P11 — Copy of the maternity benefit certificate

Ex.P12 — Copy of the medical certificate issued by C.M.O., Certh India.

Ex.P13 — Letter by the petitioner, dated 11-10-2006 to the Labour Officer.

Ex.P14 — Reply by the respondent, dated 13-11-2006

Ex.P15 — Notice of enquiry to the petitioner and respondent, dated 4-12-2006.

Ex.P16 — Failure report, dated 10-10-2007

Ex.P17 — Notification of the Labour Department, dated 11-2-2008.

List of respondent's witnesses:

RW.1 — 16-11-2012 Sriram Murthy

RW.2 — 6-12-2012 G. Murugan

RW.3 — 6-12-2012 S. Senthil

RW.4 — 27-12-2012 C. Amalan

List of respondent's exhibits:

Ex.R1 — Leave letter of the petitioner from 12-5-2003 to 13-7-2003.

Ex.R2 — Medical certificate of the petitioner dated 12-5-2003.

Ex.R3 — Application for leave by Senthil to the respondent.

Ex.R4 — Medical certificate of Senthil, dated 7-7-2005

Ex.R5 — Fitness certificate, dated 21-7-2005 by Senthil.

Ex.R6 — Application for leave, dated 12-9-2006 from 28-8-2006 to 11-9-2006.

Ex.R7 — Extract from the register from 1-1-2006 to 31-3-2006.

Ex.R8 — Letter, dated 11-10-2006 submitted by the petitioner to Labour Officer.

Ex.R9 — Reply dated 13-11-2006 submitted by the respondent to the Labour Officer.

Ex.R10 — Copy of the proceedings, dated 14-3-2007 by the Labour Officer.

Ex.R11 — Copy of the proceedings, dated 9-5-2007 by Labour Officer.

Ex.R12 — Register relating to entry of visitors from 4-9-2004 to 31-12-2005.

Ex.R13 — Register relating to entry of visitors from 1-1-2006 to 31-3-2007.

Ex.R14 — Copy of the identity card of one Murugan.

T. MOHANDASS,
Presiding Officer, Labour Court,
Puducherry.

**GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT**

(G.O. Rt. No. 58/Lab./AIL/J/2013, dated 18th April 2013)

NOTIFICATION

Whereas, an award in I.D. No. 18/2011, dated 31-1-2013 of the Labour Court, Puducherry in respect of the industrial dispute between the Chief Executive, KALKI, Puducherry and one Thiru N. Sivakumaran, over non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G.O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said award shall be published in the official gazette, Puducherry.

(By order)

S. THAMMU GANAPATHY,
Under Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PUDUCHERRY

Present : Thiru T. MOHANDASS, M.A., M.L.,
Presiding Officer, Labour Court.

Thursday, the 31st day of January 2013

I.D. No. 18/2011

N. Sivakumaran . . . Petitioner

Versus

The Chief Executive,
KALKI, 132, Mission Street,
Puducherry. . . Respondent

This industrial dispute coming on 28-1-2013 before me for final hearing in the presence of Thiru P. Rabindran, Advocate for the petitioner, Thiru B. Mohandass, Advocate for the respondent, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this court passed the following :

AWARD

This industrial dispute arises out of the reference made by the Government of Puducherry, *vide* G.O. Rt. No. 120/AIL/Lab./J/2011, dated 16-6-2011 of the Labour Department, Puducherry to resolve the following dispute between the petitioner and the respondent, *viz.*,

(1) Whether the dispute raised by Thiru N. Sivakumaran against the management of M/s. Kalki, Puducherry, over refusal of employment is justified?

(2) If justified, to what relief the petitioner is entitled to?

(3) To compute the relief, if any, awarded in terms of money, if it can be so computed?

2. The petitioner in his petition has stated as follows:

The petitioner was employed in the respondent company in the month of June 1999 and initially he was appointed as probationer-Cashier and was paid a monthly salary of ₹ 1,700. Thereafter he was confirmed and was paid ₹ 2,000 per month. The petitioner was rendered unblemished service since his appointment in the respondent concern.

In such circumstances, a Frenchman called by name Sergio came to be appointed as one of the Executives of the respondent concern and he started behaving in an inhumanly manner violating human rights. He harassed the petitioner with abusive language and often used to make the petitioner to clean his shoes and at time he has even assaulted the petitioner in causing injuries. The petitioner suffered mental and physical harassment resulting in serious depression and mental agony for the petitioner. The petitioner complained all such unruly behaviour of the said Frenchman to the Chief Executive of the company but nothing happened.

In such circumstances, all of a sudden the petitioner was virtually terminated from his service in the month of August 2009 without any reason or without any enquiry in any manner whatsoever. When the petitioner attempted to meet the Chief Executive, the petitioner was thrown out from the shop mercilessly. Hence, the petitioner moved the Conciliation Officer for remedy and he conducted the conciliation and since the conciliation proceedings ended in failure, the Labour Officer reported failure of conciliation. In pursuance, the Government of Puducherry has referred the said dispute for adjudication before this court.

3. The respondent in his counter has stated as follows:

The petitioner was in continuous unauthorised absence from 14-8-2009 and so he was issued a show cause notice, dated 19-8-2009 asking him to contact the respondent management at once. On receiving the said notice, the petitioner sent a letter, dated 17-8-2009 making allegations of harassment and using of abusive language against him by Sergio, Honorary Designer and Consultant in-charge of the respondent

organisation. To find out the truth in respect of the allegations in the letter of the petitioner, the management decided to conduct the preliminary enquiry on 5-9-2009 through Mr. Arokiaraja. However, he did not participate in the preliminary enquiry as instructed by the respondent in the notice of enquiry, dated 27-8-2009. On the other hand, he sent a letter, dated 1-9-2009 to the Chief Executives of the respondent management with false and untenable allegations against them.

Through notice, dated 11-9-2009 the respondent management called upon the petitioner to join duty within 72 hours from the receipt of the said notice. For the said notice, the petitioner sent a reply dated 15-9-2009 stating that he was hospitalised at GH, Puducherry and he could report only after medical condition is improved. The management waited for sometime but the petitioner did not report for duty. Having come to know that the petitioner was not hospitalized and he was physically sound to join duty, the respondent sent a reminder notice, dated 10-10-2009 calling upon him to join duty within 72 hours from the receipt of the said notice. For the said notice, the petitioner sent a reply, dated 21-10-2009 falsely alleging the racial harassment against him by foreign executive. There was no termination of service of the petitioner and the petitioner has also not utilised the repeated opportunities to get into the service. Hence, they pray for dismissal of the industrial dispute.

4. On the side of the petitioner, PW.1 was examined and Ex.P1 to Ex.P8 were marked. On the side of the respondent, RW.1 was examined and Ex.R1 to Ex.R8 were marked.

5. *The point for consideration is:*

Whether the industrial dispute can be allowed?

6. *On this point :*

The contention of the petitioner is that the petitioner was employed in the respondent concern in the month of June, 1999 and he was initially appointed as probationer - Cashier and was paid a monthly salary of ₹ 1,700 as a probationer and thereafter his probation was confirmed and after confirmation he was paid a sum of ₹ 2,000. He further contended that he has rendered unblemished service since his appointment in the respondent concern and often he was lauded for his sincerity and hard work by the other superior employers and therefore the petitioner's last drawn wage is ₹ 7,000 per mensem with additional perks and other allowances to the tune of ₹ 1,000 per month and altogether he was drawing a sum of ₹ 8,000 approximately as the additional perks and allowances

would differ every month. In order to prove his case, the petitioner examined himself as PW.1 and Ex.P1 to Ex.P8 were marked. Ex.P1 is the appointment order, which proves that he was an employee under the respondent company.

7. PW.1 in his evidence has further stated that a Frenchman called by name as Sergio came to be appointed as one of the Executives of the respondent concern and this person Sergio has a bad caliber and he is prone to racial discrimination and he started behaving in an inhumanly manner violating human rights and he harassed him with abusive language and often used to make him to clean his shoes and at times he has even assaulted him in causing injuries and he suffered mental and physical harassment resulting in serious depression and mental agony for him. PW.1 further stated that he complained all such unruly behavior of the said Frenchman, who was himself outstaying without valid visa, to the Chief Executive of the company but nothing happened and the said Sergio was not even questioned or enquired of his grievances and the level of hostility and unfairness shown towards him by the management of the respondent concern along with the said Sergio is beyond imagination in a comparable situation like this and his complaint to the Chief Executive was not even read and it all went to the dustbin as such remained only futile attempts.

8. PW.1 further deposed that in such circumstances all of a sudden he was virtually terminated from his service in the month of August, 2009 without any reason or without any enquiry in any manner whatsoever as he was not allowed to enter the premises and was not called upon to inform as to the reason of his non-employment and when he attempted to meet the Chief Executive, he was thrown out from the shop mercilessly.

9. On the other hand, the respondent/management's contentions would be that the petitioner was in continuous unauthorised absence from 14-8-2009 and that he was issued a show cause notice, dated 19-8-2009 requiring him to contact the respondent/management at once and on receiving the said notice sent by the management, the petitioner sent on 20-8-2009 letter, dated 17-8-2009 making allegations of harassment and using of abusive languages against him by Mr. Sergio, Honorary Designer and Consultant in-charge of the respondent, the respondent organisation and to find out the truth in respect of the allegations in the letter of the petitioner, dated 17-8-2009 (but sent by him on 20-8-2009 after the receipt of the respondent's notice, dated 19-8-2009) the management decided to conduct the preliminary enquiry on 5-9-2009 through Mr. Arokiaraja, the Accountant, however, he did not participate in the

preliminary enquiry as instructed by the respondent in the notice of enquiry, dated 27-8-2009. In order to prove his contention, the Accountant of the respondent company was examined as RW.1 and Ex.R1 to Ex.R8 were marked.

10. RW.1 in his evidence has further stated that the petitioner sent a letter dated 1-9-2009 to the chief executives of the respondent management with false and untenable allegations against them and sending copies of the same to the high dignitaries like the Commissioner, Labour Department, Puducherry, the Lieutenant-Governor, Puducherry and Human Rights Commission, New Delhi, but the fact remains that he had been absent from duty without leave or prior permission from 14-8-2009 onwards as on date and through notice, dated 11-9-2009, they called upon the petitioner to join duty within 72 hours from the receipt of said notice and he was also asked to show cause as to why, the management should not take disciplinary action against him for the alleged misconducts of unauthorised absence, abandonment of employment, spoiling the reputation of the management, passing derogatory remarks against the management and making false representation against the management and for the above said show cause notice, the petitioner sent reply, dated 15-9-2009 stating among other things, that he was hospitalised at the Govt. Hospital, Puducherry and he could report only after medical condition improved and after evaluation by the doctor and the management waited for sometime but the petitioner did not report to duty and he also did not send any communication in this regard and having come to know that at that time the petitioner was not hospitalised and he was physically sound to join duty the respondent management sent reminder notice dated 10-10-2009 calling upon him to join duty within 72 hours from the receipt of said notice and he was also asked to show cause as to why, they should not take disciplinary action against him for the alleged misconducts of unauthorised absence, abandonment of employment, spoiling the reputation of the management, passing derogatory remarks against the management and making false representation against the management of the respondent and for the notice 10-10-2009 the petitioner sent reply, dated 21-10-2009 falsely alleging racial harassment against him by foreign executive and on reading his reply the management came to the conclusion that the petitioner had not changed his hostile attitude towards the chief executives and he still continued to make false and vexatious allegations against them and as per the principles of labour law and also according to the contract of employment the petitioner is obliged to justify his absence from duty and as such he is under an obligation to produce the records relating to his

medical treatment (including his admission-*cum*-discharge slip) for the period of his absence from duty and as regards the claim for pay, it is to be noted that only for the period of work he is entitled to wages and as per the well known principles of labour jurisprudence when there is no work, there is no pay.

11. On a careful consideration of the claims and contentions of both parties besides the evidence adduced by them it is clearly crystal that it is on account of the allegations of the petitioner as against one Sergio said to be one of the executives of the respondent management that he is physically and mentally harassing the petitioner a difference of opinion arose and consequent to that the petitioner was unable to continue to serve the respondent management. The question whether those allegations against the said executive Sergio were true or not are not significant as far as the present claims of the petitioner before this court. But the fact remains that the petitioner has not worked in the respondent management since 14-8-2009. This specific fact is admitted by both the parties. The claims and allegations of both the petitioner and the respondent relating to the issue of show cause notice by the respondent and the reply sent by the petitioner for all such notices are all admitted.

12. However in the course of cross-examination of the respondent's witness RW.1, he has made categorical admission that there was no domestic enquiry conducted as against the petitioner for his alleged unauthorised absence from 14-8-2009 eventhough there was show cause notice on two occasions contemplating an enquiry over the absence of the petitioner. The respondent management could have in all possibilities conducted the enquiry contemplated by them even in the absence of the petitioner but there is no explanation from the respondent as to why they did not proceed with the enquiry eventhough notices contemplating the enquiry were admittedly sent to the petitioner by the respondent. In the absence of any reasonable statement as to why the contemplated domestic enquiry was not conducted by the respondent it leads to several suspicious circumstances in the light of the facts and circumstances of the case.

13. However it is an admitted fact that the respondent management is ready to reinstate the petitioner and such offer was continuously been made through their notice, dated 11-9-2009 and also before the Conciliation Officer, irrespective of the fact that the petitioner refused to accept such offer on account of his alleged apprehensions of fear in the respondent management. It is also to be further noted that RW.1 admits that the petitioner has continuously worked for a period of 10 years in the respondent concern and there was no such incident before during such tenure

of 10 years of service and this is the first time a circumstance of this nature has arose. Therefore, the facts and circumstances conclusively leads to the fact situation that it is only on account of some kind of exploitation by one of the executives in the respondent management the petitioner developed apprehensions in attending to his work. Therefore, in the above circumstances and it is also admitted that the person responsible for this labour dispute who is alleged to be one of the executive by name Sergio is not any more in the management concern and therefore in such circumstances the petitioner cannot have any difficulty in joining the service in the respondent management hereafter. The welfare of the petitioner is also to be taken into consideration in spite of the fact he has absented from attending duty. Therefore, to save scope for justice and in the interest of justice this court feels that it would be justifiable if an order of reinstatement of the petitioner is passed and that would also serve the cause of justice and suffice the situation.

14. However as far as the claim for back wages is concerned the submissions of the learned counsel for the respondent has some force. The learned counsel for the respondent argued that the petitioner was given opportunities to join service and as he had refused he cannot have a cause of action for back wages without doing any work. He further argued that the petitioner was never terminated and therefore in such circumstances the question of entitlement to back wages is not sustainable. Therefore, this court also finds that there is no justification to award back wages to the petitioner in view of the factual matrix of the case. However, as discussed above interest of justice will be served if the petitioner is reinstated but no back wages could be awarded to the petitioner.

15. In the result the industrial dispute is partly allowed and the respondent is directed to reinstate the petitioner into service with continuity of service. However, he is not entitled for back wages. There shall be no order as to costs.

Typed to my dictation, corrected and pronounced by me in the open court on this the 31st day of January, 2013.

T. MOHANDASS,
Presiding Officer,
Labour Court, Puducherry.

List of petitioner's witness:

PW.1 —14-9-2012—Sivakumaran

List of petitioner's exhibits:

Ex.P1 — Copy of the appointment order of the petitioner, dated 17-6-1999.

Ex.P2 — Discharge card of the petitioner.

Ex.P3 — Show cause notice, dated 10-10-2009 sent to the petitioner by respondent.

Ex.P4 — Letter, dated 31-10-2009 sent by the respondent to the petitioner.

Ex.P5 — Letter, dated 22-6-2010 sent by the petitioner to the respondent.

Ex.P6 — Copy of the enquiry notice, dated 13-8-2010

Ex.P7 — Copy of the enquiry notice, dated 19-10-2010

Ex.P8 — Copy of the I.D. Note, dated 30-6-2011

List of respondent's witness:

RW.1 — 23-11-2012—Aroquiaradja

List of respondent's exhibits:

Ex.R1 — Copy of the first warning letter, dated 19-8-2009

Ex.R2 — Copy of the letter, dated 17-8-2009 sent by the petitioner to respondent.

Ex.R3 — Copy of the notice of enquiry, dated 27-8-2009

Ex.R4 — Copy of the letter, dated 1-9-2009 sent by the petitioner to the respondent.

Ex.R5 — Show cause notice, dated 11-9-2009 sent to the petitioner.

Ex.R6 — Copy of the letter, dated 15-9-2009 sent by the petitioner to the respondent.

Ex.R7 — Copy of the reminder show cause notice to the petitioner, dated 10-10-2009.

Ex.R8 — Copy of the letter sent by the petitioner to the respondent, dated 20-11-2009.

T. MOHANDASS,
Presiding Officer,
Labour Court, Puducherry.

GOVERNMENT OF PUDUCHERRY
CHIEF SECRETARIAT (WORKS)

(G.O. Ms. No. 15, dated 19th April 2013)

NOTIFICATION

On attaining the age of superannuation, Thiru D. Sambasivam, Assistant Engineer, Public Health Division, Public Works Department, Puducherry is admitted into retirement with effect from the afternoon of 30-4-2013.

(By order)

N. SUMATHI,
Joint Secretary to Government (Works).